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PROBLEM: Agency Regulation [REDACTED] establishes varying rates of per diem which may be authorized and provides that "per diem for continuous temporary duty in excess of 180 days either in the United States or overseas may be authorized only with the personal approval of the Deputy Director, Assistant Director, or office head concerned." Various offices have placed different interpretations on this regulation in that some take the position that periods of leave seem to extend the 180 TDY limit, whereas other do not. Some offices take the position that a change in TDY stations serves to permit authorization of the maximum per diem rate at each succeeding station, whereas others hold the view that changes in duty station are not to be considered in determining rate at which per diem may be authorized.

DISCUSSION: Standard Government Travel Regulations provide in Section 45(a) that

"Fractional leave of absence wholly within a day, where for half of the prescribed working hours or less, will be disregarded for subsistence purposes; where it exceeds half of the prescribed working hours no subsistence will be allowed."

and Section 45(c) provides that

"Whenever a traveler takes leave of absence of any kind because of being incapacitated due to his illness or injury, not due to his own misconduct, the prescribed per diem in lieu of subsistence, if any, shall be continued for periods not to exceed 14 calendar days (including fractional days) in any one period of absence, unless, under the circumstances in a particular case, a longer period is approved."

These provisions of the travel regulations establish authority for the payment of per diem to persons in a TDY status during absence of $\frac{1}{2}$ day or less due to annual leave, and for absences of 14 days or less due to sick leave. Accordingly, Finance Division has been paying per diem in such instances where claimed and properly authorized and approved.

The authority and propriety of paying per diem while on leave in a TDY status under the circumstances and limitations cited above appear clear. Also, in such cases questions as to the application of the 180-day rule appearing in [REDACTED] are not troublesome. In cases where leave is taken while in a TDY status and per diem is not approved and paid, however, often presents the question as to whether the period of leave taken should serve to extend the 180 period by the amount of leave taken. For example, an employee in a TDY training status takes 15 days annual leave and then the question is presented as to whether office head approval for TDY beyond 180 or 195 days from date of TDY assignment is required.

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As a practicable matter, any effort to extend the TDY period by the amount of leave taken for which per diem is not paid imposes administrative and audit problems which do not appear to be justified under the circumstances. Furthermore, such extension appears to be contrary to the intent of the regulations to require high level consideration and approval of continued TDY status after 180 days. In the interest of simplification and uniformity of application, as well as conformance with the apparent intent of the regulation, total elapsed time from date of TDY assignment, including absences from original duty point on account of leave should be counted in determining when it is necessary to obtain approval to extend TDY beyond 180 days under

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A related problem exists in the case of continuous TDY at more than one point. In such instances, there appears to be no doubt but that the total time without regard to changes in duty station should be counted toward the 180-day limit. The determination of applicable per diem rates in such circumstances, however, apparently is confusing inasmuch as variations have occurred between various divisions and offices.

To illustrate, an employee reports to Headquarters for TDY training prior to overseas assignment. After 30 days he is transferred to a training site away from Headquarters where he is on duty for 60 days. At the end of the 60 days he reports back to Headquarters.

In such cases Office A has authorized per diem on return to Headquarters at \$4.50 per day for 30 days and then \$1.50 for 60 days, whereas Office B takes the position that the TDY at Headquarters was broken within the meaning of [REDACTED] and, therefore, authorized per diem at \$9.00 for 30 days on return to Headquarters and \$4.50 for the 60 days remaining within the 180 day period.

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It does not appear that either of the above procedures is in violation of existing regulations. Such applications, however, do not result in equal treatment for all employees under similar circumstances and give rise to many complaints. The second method appears to be more appropriate to the expenses which an employee can reasonably be expected to incur on his return to Headquarters after an absence of such length as to cause him to have to seek out and re-establish living quarters. Also, such procedure does not appear to be contrary to the intent of regulations as long as the absence from the previous TDY point exceeds 10 days.

Although it is the opinion of the Finance Division that the second method is preferable from an equity standpoint, the first method is not objectionable providing it is uniformly applied.